

## **SEXUAL HARASSMENT**

### **Questions and Answers**

#### **1. What is sexual harassment?**

Form of gender discrimination prohibited by law and board policy

- Unwelcome sexual advances or touching
- Requests for sexual favors
- Can also be a work environment where gender is an issue in some way or another
- Conduct that affects the victim's work performance or creates a "hostile environment"

#### **2. What is "quid pro quo" sexual harassment?**

Term that means "this for that"

When someone with supervisory authority takes action or promises or threatens to take action against a subordinate based on the victim's willingness to accept or go along with the harasser's sexual advances

### **SCENARIO**

Kaitlyn was recently hired as a P.E. teacher and asst. volleyball coach. The A.D. frequently calls her "honey" and "sweetie". The "honey" and "sweetie" is bad enough, but the A.D. has also made comments that have made her very uncomfortable. He frequently comments on her appearance and once said that she looked "hot" in her workout clothes. He also has a habit of touching her in a way that she finds overly familiar. Although Kaitlyn has tried to be very business-like and stay focused on work, hoping that he would get the hint, the conduct has continued and even gotten worse. Last week, the A.D. started talking to her about the problems he was having with the head volleyball coach and suggested that Kaitlyn join him for a drink so they could talk about how she could earn a promotion to that position.

- **Do you see anything wrong with the A.D.'s conduct**
- **Why does it matter that the A.D. is Kaitlyn's supervisor**

- **What type of sexual harassment claim would Kaitlyn have?**

**4. Does all sexual harassment involve promises or threats like the scenario we just went over?**

No. Not all sexual harassment involves bribes or threats. The courts have held that sex-based conduct that is sufficiently severe and pervasive may create a “hostile environment” that is prohibited under Title VII and state law. Such conduct is also prohibited by our Board Policy, which we will discuss in greater detail later.

**5. What type of conduct may create a “hostile environment”**

**Give an example have you witnessed or been subjected to that falls into this category.**

- Off color comments
- Sexual jokes and innuendo
- Unwanted touching
- Sexual imagery — drawings, pictures, etc.
- Unwanted flirtation
- Sexual slurs or derogatory comments based on sex
- Sexual banter

**Do you think that a single incident can rise to the level of sexual harassment?**

**What kind of evidence would support a valid claim of hostile environment sexual harassment?**

Conduct that is *sufficiently severe and pervasive* to alter the terms of the victim’s employment and create an abusive work environment.

*Isolated incidents* generally will not create a “hostile environment” unless very serious. A single incident of unwanted touching more likely to be considered sufficiently severe to constitute harassment.

**Say there’s a teacher who is extremely religious and very sensitive to off color comments or bad language. The teacher claims that she has been subjected to**

**a hostile work environment because colleagues occasionally tell off-color jokes in the teacher's lounge and bad language is pretty normal. Does this teacher have a valid claim for hostile environment sexual harassment.**

The courts will generally look at the situation from the viewpoint of a “*reasonable person*”, that is, is the conduct in question sufficiently severe and pervasive to create an abusive work environment for a “reasonable person”.

**6. Do women ever sexually harass men?**

Yes. The laws were written to prohibit certain types of conduct in the workplace. They are meant to protect everyone. According to the EEOC, about 14% of sexual harassment complaints are filed by men.

**7. Can a person sexually harass a person of the same sex?**

Yes. Anytime you have harassment directed at someone because of sex, that is a violation of the law. The key is whether an employee is being harassed “because of sex”.

**8. Is flirting sexual harassment?**

Generally speaking, no. The critical question is whether the behavior is unwelcome.

**SCENARIO**

We left Kaitlyn in a very tough spot. She is 23 years old, with limited work experience, in a brand new job and her 40 y/o boss is hitting on her. She is really upset and is starting to dread going to work because she knows that she is going to have to deal with him everyday.

Kaitlyn declined the A.D.'s invitation to have a drink. She joked that she didn't think her boyfriend would approve and that she really doesn't drink much, anyway. She talks about her boyfriend all the time, hoping that the A.D. will get the hint. He hasn't.

Kaitlyn finally confided in you, told you what was going on and said that the A.D. was making her life miserable.

**9. What should you tell Kaitlyn?**

Tell her about the district’s anti-harassment policy. Show her where to find it on the website and tell her that she needs to file a complaint with the principal immediately.

Encourage her to write down a description of the harassment, with dates, locations and witnesses, if at all possible, and to bring any other evidence she might have to bolster her complaint, for example, a text from the A.D. telling her that she looked “especially hot” that day and dirty jokes he sent via e-mail.

**10. What will happen if Kaitlyn does make a complaint to the principal?**

Every employee has the right to work in a healthy, productive workplace free of any type of harassment or bullying. Complaints of sexual harassment are taken very seriously.

The principal will forward the complaint to H.R. for investigation. An H.R. rep will take statements from the alleged harasser, victim and any witnesses and collect any other relevant evidence. The investigator will prepare a written summary and make a recommendation to the Chief of H.R. within 30 days of when the complaint is received in H.R.

**11. Will the investigation be confidential?**

The district can’t guarantee confidentiality because there must be some disclosure in order to conduct an investigation. However, H.R. reps make every possible effort to ensure confidentiality to the extent possible.

**12. What happens if H.R. concludes that the A.D.s conduct was inappropriate?**

If there is reasonable cause to believe that the A.D.s conduct violated Board policy, H.R. will schedule a “due process conference” during which the A.D. will have an opportunity to present evidence and respond to the charge against him.

**13. What happens next?**

H.R. reps will review and assess all of the evidence presented and make a determination as to whether the A.D. violated the district’s sexual harassment

policy or any other district policies. H.R. will make a recommendation to the Superintendent who will make the final decision regarding discipline.

The discipline could be anything from a reprimand and sexual harassment training to termination.

If the A.D. is not terminated, it is likely that he would be re-assigned so that Kaitlyn does not have to work with him anymore.

**14. The A.D. was very popular in the school community and everyone is now angry at Kaitlyn for complaining and at you for helping her. The A.D. is your principal's brother-in-law. Should you be worried about your job?**

No. Retaliation against Kaitlyn for making a complaint is strictly prohibited by law and Board policy. Likewise, retaliation against any employee for participating, in any way, in the investigation of a complaint is prohibited and will not be tolerated.

**15. You are the principal. Kaitlyn complains to you about the A.D., who happens to be your brother-in-law. You tell her to "lighten up", that the A.D. is "old school" and doesn't mean anything by it. Kaitlyn files a complaint with the EEOC which later issues a Right to Sue letter to Kaitlyn. Can you be held personally liable if Kaitlyn sues?**

Yes. As Kaitlyn's supervisor, you have an obligation to enforce the district's policies and to make sure that an investigation takes place so that the district can take prompt, appropriate corrective action.

**16. Kaitlyn tells you that she feels very uncomfortable making a complaint to the principal about her brother-in-law. What should you tell her?**

Tell her to go to the Executive Director or H.R. or H.R. Kaitlyn should not have to report to the principal in this case if she feels uncomfortable about the relationship.

